RFA 104/1999
BEFORE
HON'BLR MR JUSTICE AMITAVA ROY

R.F.A. NO. 104/1999

APPELLANTS :

1. Smti. Subhadra Devi,
W/O Sri Joy Prasad Sarma

2. Sri Prem Sarma,
S/o Sri Joy Prasad Sarma,
Resident of Phulbari Pathar Gaon
P.S. Silapathar, Dist. Dhemaji, Assam.

BY ADVOCATES :

Mr MK Choudhury, Senior Advocate,
Ms M.Dev, Advocate
Mr MP Sarma,Advocate,
Mr M.Dutta,Advocate.

RESONDENT :

Tika Ram Sarma,
S/o Late Narayan Sarma,
Resident of Phulbari Pathar Gaon,
P.S. Silapathar,
Dist. Dhemaji, Assam.

BY ADVOCATES:-

Mr DC Mahanta, Senior Advocate,,
Mr TJ Mahanta, Advocate,
Ms P.Bhattacjarjee, Advocate.

Date of hearing : 03.04.2007 & 08.05.2007

Date of Judgment : 08.05.2007

JUDGMENT AND ORDER(ORAL )

The judgment and order dated 13.9.1999 passed by the learned District Judge, Dhemaji in Title Suit No.8/1996 decreeing the suit of the respondent No.1/plaintiff is under challenge.

2. The pleaded versions of the parties provide the factual background. The respondent No.1/plaintiff instituted the aforementioned suit praying for a decree inter alia for declaration of his right, title and interest in the suit land described in schedule A to the plaint and for recovery and/or confirmation of possession of the land described in schedule-B . A decree for permanent injunction was also prayed for restraining the defendants from interfering with his possession in a portion of the suit land. He alleged that he had been possessing a plot of Towji land measuring 3 kathas 6 lechas in Phulbari Pather revenue village under Sissi Mouza. One Sri Mandas Regmi was in possession of a plot of land measuring 1 bigha 1 katha adjacent thereto. This was also a Towji

land. The proforma defendant No.9 Joy Prasad Sharma purchased the said land from Mandas Regmi in the year 1982 and constructed his house thereon and shifted his family to that land. Intending to dispose of the properties at Silapathar area , the proforma respondent Mo.9 disposed of the same in a phased manner as follows :-

| Date | Purchaser | Consideration | Area |
|---|---|---|---|
| 5-1-87 | Sri Churamoni Sarma | Rs.13,000/- | 10(ten) Bighas |
| 2-2-87 | Sri Dil Prasad Sarma | Rs. 7,000/- | 3(three) |
| 1987 | Plaintiff | Rs.24,000/- | 1(one) Bigha 1(one) katha |
| 3-4-87 | Uma Kt.Chetri S/o Suren Chetri | Rs.20,000/- | 13(thirteen) karthas |

The respondent No.1/plaintiff therefore purchased one bigha one katha of land from the proforma defendant No.9 at a consideration of Rs.24,000/- in the year 1987 and from the date of sale took over the possession thereof along with the house standing thereon. The sale deed evidencing the transaction was destroyed in a fire accident and accordingly the proforma defendant No.9 executed another document on 24.9.1994 inter alia acknowledging the sale. After coming into possession of the land purchased , the respondent No.1/plaintiff used the same along with others by cultivating paddy and Rabi crops. He also used to let the houses thereon on rent . He paid Touzi revenue since 1978-79 against Towji No.37/87. Taking into consideration his continuous possession of the land, he was issued Annual Patta No.4 in respect of an area measuring 1 bigha 4 kathas 6 lechas in the year 1992 under New Dag No.71. This annual patta got converted into periodic patta No.5 in the year 1993. The respondent No.1/plaintiff alleged that taking advantage of temporary absence of his tenants, defendant Nos 1,2,3,5 and 10 trespassed into the house and threatened to dispossess the respondent No.1 from the suit land. A complaint case was also filed before the learned Chief Judicial Magistrate, Dhemaji under Sections 448/427/506/34 IPC against the aforesaid defendants for alleged trespass, but to no avail . As the defendants continued to threaten the respondent No.1/plaitiff of dispossession from the suit land, the suit was filed.

3. The suit was contested amongst others by the defendant Nos 1,2 and 10. They denied inter alia the sale of the suit land by the proforma defendant No.9 either to the respondent No.1/plaintiff or any one else. They also denied the other sales referred to in the plaint. They asserted that the proforma defendant No.9 was mentally ill in 1994 and was undergoing treatment therefor in the Assam Medical College Hospital and thus was not either physically or mentally fit to execute the sale deed. They alleged that the sale deed and other deeds relating to sale also to be forged. They claimed to have paying Touzi Bahi revenue since 1983/84 for the land involved. They contended that the respondent No.1/plaintiff by taking advantage of illness of the proforma defendant No.9 deluded the revenue authorities to acquire the annual patta in 1992 and period patta in 1993 in respect of the suit land of which he was not in possession. They alleged that having come to learn of the above ,they filed objection before the Circle Officer, Sissiborgaon . They admitted that their objection before the said authority having failed , they preferred appeal before the Deputy Commissioner, Dhemaji which also met the same fate. They asserted that thereafter they took the challenge to the learned Board of Revenue, Assam which was entertained and is still pending as No.94RA(Dmj)/97 wherein the orders of the Circle Officer and the Deputy Commissioner had been stayed . While contending that the respondent No.1/plaintiff had no possession of the suit land ,they alleged that by obtaining the annual patta and the periodic patta by misleading the revenue authorities, he intended to illegally grab their properties . On the basis of the pleading ,following issues were framed -

1) Whether, there is a prima facie case against the defendant ?
2) Whether, the plaintiff had been in possession of the suit and prior to obtaining patta ?
3) Whether the plaintiff has any valid title over the suit land >
4) Whether , Sri Joy Prakash Sarma was mentally ill and was undergoing trea

tment in Assam Medical College Hospital, Dibrugarh during the relevant period ?
5) Whether, the plaintiff is entitled to any decree and injunction against the defendants?

The respondent No.1/plaintiff examined himself and nine other witnesses . Defendants also examined defendant No.1 Subhadra Devi, defendant No.10, Chabilal Sarma and 4 others. Both the parties also proved and exhibited several documents.

The learned trial court decreed the suit holding that by dint of the sale made by the proforma defendant No.9 in favour of the respondent No.1/plaintiff in the year 1987 and reiterated by the document on 24.9.94, Ext. 1, the respondent No.1/plaintiff was in possession of the suit land prior to the issuance of the annual patta and finally the periodic patta in his favour. The plea of insanity and/or mental illness of the proforma defendant No.9 disabling him from entering into the sale transaction was discarded holding that the appellants defendants had failed to discharge their burden to establish the same.

4. Mr Dutta has assiduously urged that the respondent No.1/plaintiff having failed to prove the sale of the suit land by the proforma defendant No.9 and that the document, Ext.1 being in admissible in law, the suit ought to have been dismissed. The learned counsel denounced the finding against the assertion of mental illness of the proforma defendant No.9 as perverse contending that variations in his father's name in Ext. 20 and Ext.'Jha' could not have been taken a ground to reject the case of the defendants. Mr Dutta maintained that the respondent No.1/plaintiff having mentioned the proforma defendant No.9's father name to be Uma Kanta Srma , in the plaint it was identical with that in the hospital certificate Ext 20, which discloses that the said respondent was suffering from schizophrenia. The learned counsel therefore urged that the impugned judgment and order suffers from incurable illegalities rendering the same non est. Mr Dutta also urged that the respondent No.1/plaintiff having procured the pattas by misleading the revenue authorities the same are not legally recognizable and the learned trial court in over looking this aspect of the matter ,erred on a fundamental principle of law.

5. In reply, Mr Mahanta has urged that the sale being only of the possessory right of the suit land, the oral testimony to the said effect corroborated by the document dated 24.9.99 Ext. 1 was sufficient proof of the transaction. The revenue authorities having issued the annual patta and thereafter the period patta in respect of the land being satisfied that the respondent No.1/plaintiff was at all relevant time in possession of the land and otherwise entitled thereto, the learned court below rightly decreed the suit. In any case, the learned Senior counsel argued that the issue having been finally settled in the revenue forum, it ought not to be reopened in this appeal, the appeal before the Revenue Board having in the meantime, been dismissed. Mr Mahanta has contended that the plea of mental illness of the proforma defendant No.9 having been taken in defence, it was the exclusive burden of the defendants-appellants to prove the same and they having failed to do so, the judgment and order does not merit interference on any count.

6. The contesting arguments have been duly considered. A bare reading of the plaint makes it apparent that the respondent No.1/plaintiff claimed to have purchased the possessory right of the suit land , which at the relevant time was a government land for which Touzi Bahi was paid by the occupants thereof. That the sale transaction between the respondent No.1/plaintiff had taken place is established not only from the oral evidence and even the suggestion made on behalf of the appellants defendants , but also from the document, Ext.1. It appears from the materials on record that apart from the said sale , proforma defendant No.9 also indulged in other sales of his land which amongst others is apparent from the sale document Ext. 16 executed on 5.1.1987 in favour of the PW 8, Suramoni Sarma . As a matter of fact, respondent No.1/plaintiff had set out the details of such transactions of the year 1987 in the plaint. Not only the sale document dated 24.9.94 had been proved, the signature of the proforma defendant No.9 therein had also been identified.

PW 4, Debananda Lahom ,the scribe and PW 3, Amar Chetri in their testimony proved the sale transaction. PW 10,Ambika Kumar Chutia, jurisdictional Lot mandal

testified that the suit land covered by Dag No.71, periodic patta No.5 stood registered in the name of the respondent No.1/plaintiff. The revenue records, Ext.10 copy of the Jamabandi, Ext.23 copy of the Chitha also registered the above fact. The Jamabadi ,Ext.10 discloses that the annual patta No.4 issued in favour of the respondent No.1/plaintiff was converted into periodic patta in terms of the order dated 10.3.1993 of the concerned Circle Officer and on payment of necessary premium by him. The copy of the chitha of Fulbari Pathar, Mouza Sissibo rgaon circle , District Dhemaji also bears out the above. The revenue paying receipts from 1994 divulge that the respondent No.1/plaintiff had been paying revenue for the land covered by periodic patta No.5. All these documents unequivocally demonstrate that the suit land had been in possession of the respondent No.1/plaintiff and was thus favoured with annual patta followed by periodic patta.

7. Though a challenge to the corresponding order and /or decision of the revenue authority had been made with the territorial Circle Officer by the appellants/defendants, the same failed. As the appeal before the Deputy Commissioner, Dhemaji also did not yield any result, they took the fight to the Assam Board of Revenue. The case No.94RA(Dmj)/97 registered has been dismissed for default on 4.6.2000. Admittedly , the appeal has neither been revived nor the challenge has been pursued thereafter. In other words, the orders of the revenue authority granting annual patta and thereafter the periodic patta to the respondent No.1/plaintiff at this distant point of time have attained finality. The materials on record do not furnish any evidence to hold that the grant of annual patta and the periodic patta in favour of the respondent No.1/plaintiff had been either impelled by extraneous consideration or illegally obtained by him as alleged. Such orders constitute an official acts , the validity whereof has to be presumed, though rebuttable. In the instant case, there is no evidence to dislodge that presumption in favour of the appellants/defendants.

8. Irrefutably, the plea of insanity of the proforma defendant No.9 having been raised by the appellants/defendants, in law, it was their responsibility to discharge the said burden. To this effect, the appellants defendants have pressed into service the Discharge Certificates issued by the Psychiatry Department of the Assam Medical College Hospital, Dibrugarh. Whereas Ext.'cha' and 'Ja' referred to one Jay Prasad Sarmah without disclosing his father's name, Ext. Jha' indicates it to be Gauri Kanta Sarma. The Discharge certificate Ext.'cha' relating to 1987 disclose that the patient named therein at the relevant time was suffering from schizophrenia. Ext.'Cha' & 'Jha are of 1994/1995 and also refer to the same ailment. Apart from indicating that the patient requires regular treatment and constant supervision, the said documents do not suggest that thereby the person concerned suffered from any incurable mental insanity and unsoundness of mind rendering him incapable of understanding the implications of his acts and decisions . The said documents also do not demonstrate that the disease from which the person was suffering was permanent in nature. The Certificate issued by the Out Patient Department of said hospital on 24.6.1996. Ext.20 refers to one Joy Prasad Sarmah son of Uma Prasad Sarmah, resident of Umatara Tea estate to the effect that he had been undergoing treatment in the department of Psychiatry since 13.2.87 . The learned trial court rejected the Ext. 'Jha' along with other certificates on the ground that the father's name of the patient as shown therein did not tally with the one in Ext.20. Though, the above consideration might not have been conclusive on the issue , the evidence adduced by the appellants/defendants both oral and documentary on the aspect of alleged mental illness of the proforma defendant No.9, in my view is wholly inadequate to discharge their burden. Admittedly, the appellants/defendants did not examine any doctor to dilate on the claim of illness of schizophrenia and the bearing thereon on the mental acuity and understanding of a patient ,qua his daily activities. Ext.'Jha' per se even if taken on its face value , in my view, does not necessarily establish that at the time of sale the possessory right of the suit land in favour of the respondent No.1/plaintiff , the proforma defendant No.9 suffered from any mental disease denuding him of the capacity of any understanding whatsoever thereby rendering the transaction void and non

est in law.

9. I have carefully examined the evidence on record and perused the discussion recorded by the learned trial court before arriving at its conclusions. Not only the assessment of the evidence has been exhaustive the reasonings in support of its findings are persuasive. The adjudication made in the face of the materials on record cannot thus cannot be condemned as perverse or in defiance of logic.

10. In the above view of the matter, the judgment and order assailed, in my view , do not merit interference in this appeal. The appeal being without any substance is hereby dismissed. No costs.